

No. 7:14-MC-1-WW

Defendant.

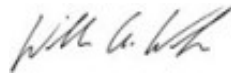
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FRCP 27(a).

This rule permits the taking of testimony prior to commencing an action where (1) the anticipated action is within federal jurisdiction, (2) the petitioner is presently unable to bring or cause to be brought the underlying action and (3) there is a reason or need to perpetuate the testimony sought. *Petition of State of N.C.*, 68 F.R.D. 410 (S.D.N.Y. 1975). Without addressing the availability of Rule 27 herein, Plaintiff has failed to allege facts in support of these three factors. Moreover, Rule 27 is to be used in instances where, as result of time, witness' testimony might become unavailable. *Petition of Gurnsey*, 223 F. Supp. 359 (D.D.C. 1963). It does not provide a method of discovery to determine whether cause of action exists, and, if so, against whom action should be instituted. *Id.* Vague and conclusory allegations that testimony or information may be lost, destroyed, or unrecoverable in the future does not demonstrate an immediate need to perpetuate evidence, as basis for allowing perpetuation discovery. *In re Landry-Bell*, 232 F.R.D. 266 (W.D. La. 2005). *See also Ash v. Cort*, 512 F.2d 909 (3d Cir. 1975) (finding that trial court did not abuse discretion in denying motion to perpetuate testimony where movant supported motion only with conclusory statements.)

Accordingly, Plaintiff's objections (DE 3) are overruled and the motion to quash and to amend (DE 4) is DENIED.

SO ORDERED in Chambers at Raleigh, North Carolina on Thursday, March 6, 2012.



WILLIAM A. WEBB
UNITED STATES MAGISTRATE JUDGE